



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12283728

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a writer and lecturer about the game of poker, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned doctorates in mathematics and mathematical logic from the University , and has applied his mathematical knowledge to poker. The Petitioner writes about poker for various websites and teaches a class at the which offers classes to students aged 50 and older. At the time of filing the petition in July 2019, the Petitioner was working on a book “which may be accompanied by a video series.”

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met five criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;

The Petitioner also claimed to have submitted comparable evidence in lieu of criterion (vi), authorship of scholarly articles.

The Director concluded that the Petitioner met the criterion numbered (iv). On appeal, the Petitioner asserts that he also meets the criteria numbered (iii), (v), (vi), and (viii). The Petitioner does not contest

the Director's conclusions regarding criterion (vii), and therefore we consider that issue to be abandoned.¹

After reviewing all of the evidence in the record, as explained below, we conclude that the Petitioner has not satisfied any of the evidentiary criteria.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner asserts, on appeal, that the Director did not give sufficient weight to articles published online. There is some merit to this general proposition, but review of the record reveals a more fundamental issue.

The Petitioner submits several printouts of two articles, both from late 2018, which appeared on several websites, including the websites of local affiliates of some major television networks. The wording of each version of the articles is the same, indicating a common source. The articles do not name the author, as the regulations require. Instead, they are credited to "Marketers Media," identified as a "Press Release Distribution Service." Many of the submitted printouts include this disclaimer: "Information contained on this page is provided by an independent third-party content provider. Frankly [the owner of the affiliate] and this Station make no warranties or representations in connection therewith."

The record also includes a copy of the "Press Release Distribution Report" for one of the articles. The Petitioner's possession of this document further supports the conclusion that he, or someone acting on his behalf, engaged a marketing company to issue press releases to various media outlets which, in turn, claim no responsibility for the contents thereof. Third-party content published with a disclaimer in this manner cannot be considered to be equivalent to news coverage by the network affiliates and other outlets involved; the press releases are more akin to advertising than to journalism. Marketing materials created for the purpose of selling a petitioner's products or promoting his or her services are not generally considered to be published material about the petitioner.²

Apart from the promotional press releases, the Petitioner submits other articles, each of which is deficient in some respect. Translated copies of [] language articles about the Petitioner lack the required author credits, greatly restricting their probative value, particularly in conjunction with other evidence showing that the Petitioner essentially purchased media coverage for promotional purposes.

¹ See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

² USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

An article about the Petitioner appeared in the [] “a student-run publication” at [] A blog post from [] at [] noted the publication of the [] article. The record does not show significant readership of either media beyond [] students, employees, and alumni.

Articles about the Petitioner appeared on the websites of *Pokerground* and [] *Reporter*, each of which receives less than 40,000 visits per month. Similar reports for the sites of local television network affiliates (not the networks themselves, which would consistently attract national traffic) show figures in the hundreds of thousands or even millions. The Petitioner has not established that [] *Reporter* or *Pokerground* constitute professional or major trade publications or other major media.

The Petitioner has not satisfied this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

Officials of Winning Poker Network (WPN), Upswing Poker, and PokerNews state that the Petitioner makes valuable contributions as a columnist for the websites, and that the Petitioner suggested important revisions to WPN’s [] Counsel for the Petitioner asserts that “Upswing Poker is one of the most successful poker training sites in the world”; “WPN’s website . . . is considered the number one US poker site online”; and “Poker News is the world’s leading website dedicated to providing poker enthusiasts with a source of news, strategy, and more.” Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner documents the web traffic to the websites, which permits a comparison between those three sites, but does not show their standing in the field overall (which includes other poker sites). A reputation is dependent on outside perception, which cannot be established through statements from within the organizations.

We note that on a printout from its own website, WPN does not claim to be “considered the number one US poker site.” Rather, the site states: “Our growth has been tremendous over the last several years and we are positioned to be an extremely important industry player in the future.”

The Petitioner also claims to have performed in a critical role for [], but the record does not establish such a role at an institutional level. Instead, the former assistant director of [] [] states that the Petitioner “has been an essential member of [] at [], acting as an educator and consultant to many of our [] students.” The program coordinator at [] states that the Petitioner’s poker and chess courses are so popular that there is a wait list, and he is among the most highly rated instructors. The Petitioner does not establish that his role was critical to [] as a whole, or that the [] Center or [] have distinguished reputations in their own right.

A lecturer at [] College states that the Petitioner gave a well-received speech at a Philosophy Club gathering there. The lecturer does not explain why this single event was critical to [] College, and the Petitioner does not establish that the college has a distinguished reputation.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director concluded that the Petitioner satisfied this criterion. We disagree.

The founder of [redacted] Poker offers an online “Advanced Heads-Up Mastery Course.” [redacted] vice president of [redacted] Poker states that the Petitioner “was called upon to judge the [founder’s] work” and write an article on [redacted] site containing his evaluation of the course. The Petitioner describes this article as a “review.” But the article is not an objective or independent evaluation of the course. Rather, it is essentially an advertisement for a product offered by the Petitioner’s employer, on the same website where the article appeared. Every opinion stated in the article is positive, and the piece ends with “a free video from the course” and a coupon code “for \$150 off” the course.

Authorship of this promotional piece does not amount to participation as a judge of the work of others.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner submits examples of columns that he has written for online and print publications. The Petitioner initially contended that these articles are comparable evidence under 8 C.F.R. § 204.5(h)(4), but there does not appear to be a need to invoke that clause here. The Director concluded that “discussions of poker scenarios on poker websites” do not amount to scholarly articles, but we agree with the Petitioner that the term “‘scholarly articles’ can encompass writings outside of academia.”³ The articles appear to qualify as scholarly, in that they are written in a technical manner that presumes considerable knowledge of poker rules and terminology, rather than popular articles offering general advice and instructions on how to play the game.

Nevertheless, the Petitioner has not established that these articles appeared in *major* trade publications or other major media.⁴ The Petitioner submits web traffic statistics for some of the websites, but these raw statistics do not provide a basis for comparison to show that these publications have high circulation numbers compared to other publications of their kind.⁵

The Petitioner has not satisfied this criterion.

³ For fields outside academia, a scholarly article should be written for learned persons in that field. (“Learned” is defined as “having or demonstrating profound knowledge or scholarship.”) USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

⁴ Poker is not a profession as defined at section 101(a)(32) of the Act, which states: “The term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” Therefore, a publication aimed at poker players is not a professional publication, notwithstanding the vernacular term “professional poker players” who play as a primary means of support rather than recreationally.

⁵ Evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics. USCIS Policy Memorandum PM-602-0005.1, *supra*.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner asserts that his work for the above-named organizations included original contributions of major significance. For instance, he contends that his “innovative [redacted] provided to WPN stands as one of his most publicized contributions of major significance.” That publicity took the form of one of the aforementioned press releases and a blog post that names the Petitioner as its author. However beneficial the changed [redacted] may have been to WPN and to players using the site, it does not follow that the contribution was of major significance throughout the field.

The Petitioner also submits printouts of articles that he wrote for PokerNews. These articles are not evidence of their own significance, and the Petitioner does not establish that these writings are of major significance in the field. The record also indicates that the Petitioner was writing a book, but the book was not yet published at the time the Petitioner filed the petition in July 2019.⁶ Paperwork in the record indicates that the finished manuscript was due to be delivered several months later, in November 2019. Any discussion of the significance of an unpublished book would be premature.

In letters in the record, employers and other individuals credit the Petitioner with original contributions, but they do not adequately explain how those contributions are of major significance. Describing the Petitioner’s work and then praising it in hyperbolic but general and unsubstantiated terms cannot suffice in this regard.

For example, an editor-at-large of *Ante Up Magazine* states that the Petitioner’s articles “appear on websites considered to be the premiere [*sic*] online content source [redacted]” but the writer does not establish who holds that opinion. The same individual states that the Petitioner’s articles have “proven to be the most sought-after content on leading poker websites,” which is an assertion of empirical fact unsupported by data. The editor-at-large states that the Petitioner “has garnered press recognition both inside and outside the United States. . . . [H]is [redacted] analysis for *Winning Poker Network* . . . was recognized as revolutionary and covered by websites owned by CBS; ABC; FOX; NBC; and more.” As shown above, the publicity surrounding the [redacted] analysis derived entirely from press releases apparently commissioned by the Petitioner or someone connected to him. Some of the websites that ran the press release (with a disclaimer) belonged to network affiliates, but those affiliates are owned by [redacted] not by the networks named in the letter. These issues diminish the weight of the letter.

⁶ A printout from an online retailer shows an expected release date in June 2020, nearly a year after the filing date.

The editor-at-large contends that the Petitioner's "innovative contribution to the [redacted] at WPN cannot be overstated" because it solved "one of the biggest issues of poker gaming networks: [redacted]" The record does not document any significant controversy or discussion of [redacted] prior to the Petitioner's work on the subject, nor does it establish the extent to which other sites have adopted the Petitioner's [redacted]. WPN's own chief executive officer does not claim widespread adoption of the [redacted] he states that it has had a positive impact on "WPN and players alike."

The editor-at-large also asserts that the Petitioner "is actively working in promoting a predominantly male dominated game to the significantly underrepresented female population. As a result, his work has caught the attention of the Women's Poker Association which have [sic] invited him to discuss his work." The record does not establish that the Petitioner's work with that association has attracted significant notice. The Petitioner recorded a video interview with a representative from the association, which was posted online in two parts on YouTube. Screen capture printouts in the record show 116 views for part 1, and 71 views for part 2. These figures do not indicate major significance in the field. Regarding the association itself, an online article announced its founding in April 2018; the comment section following the article shows one comment (about a female author and poker player whose name does not appear in the article).

Representatives from various websites that have published the Petitioner's work offer general praise. For instance, the strategy editor at PokerNews states:

[The Petitioner's] articles have been well received by readers and by my colleagues. In fact, some . . . have been among the most read pieces to appear in the site's strategy section over recent months. To this extent, [the Petitioner] has not only contributed important content to our organization . . . , but also to the poker community as a whole. His innovative work[s] are of importance to the poker community and a much needed breath of fresh air. . . . I can attest that he has made major contributions with his unique strategies and teaching techniques.

As shown above, the letters in the record do not establish that the Petitioner has made specific, identifiable contributions of demonstrable, corroborated significance to the field (rather than individual employers or other entities).

Following a request for evidence, the Petitioner submitted an [redacted] 2019 article from *Casino*, regarding [redacted] This article appeared several months after the filing date, and therefore cannot establish the Petitioner's eligibility at the time of filing as required by 8 C.F.R. § 103.2(b)(1).

The article quotes the Petitioner regarding the [redacted]; the article does not identify any contributions by the Petitioner or attest to their significance. Instead, the Petitioner contends without support that we ought to infer such contributions because "[t]he fact that an organization as important as Casino.org consulted with the beneficiary regarding a [redacted] in the industry, speaks to the esteem in which the beneficiary is held." An email from the *Casino* reporter who wrote the article, asking the Petitioner for comments about the significance of [redacted]

[redacted] as well as insights from the Petitioner's "knowledge of probability/math," does not say why the reporter chose to contact the Petitioner or how the Petitioner came to the reporter's attention.

The Petitioner has not satisfied this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Here, the Petitioner has established that his work is of value to various publishers, and that he teaches a popular course, but he has not established the required sustained national or international acclaim or a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Some evidence that purports to facially address the regulatory criteria does not withstand scrutiny, such as the Petitioner's authorship of what amounts to an advertisement formatted as a review, and what appears to be the commissioning of press releases to create the appearance of widespread publicity.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.